

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FILE

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JUN 25 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter Of:)

Request for Amendment of the)
Commission's Rules and Regulations)
Concerning Shared Use of 900 MHz)
Paging Frequencies)

RM - 7986

**REPLY OF MOBILE
TELECOMMUNICATION TECHNOLOGIES CORPORATION**

Mobile Telecommunication Technologies Corporation ("Mtel"), by its attorneys, herewith submits its reply to comments filed in the above captioned proceeding. As detailed below, NABER's petition for rulemaking never addresses the effects of its proposals upon existing and future Private Carrier Paging ("PCP") services. Similarly, the supporting comments filed by the two principal beneficiaries of its plan are less than illuminating. In contrast, all other PCP participants provide compelling, documented evidence that the proposed rule changes are ill-advised. Accordingly, NABER's petition should be summarily dismissed.

**I. MTEL'S OPENING COMMENTS HIGHLIGHTED THE SERIOUS
DEFICIENCIES OF NABER'S NATIONAL SYSTEM PROPOSAL**

In its opening comments, Mtel noted NABER's failure to provide any analysis of the effects of its proposals on existing or future PCPs. Notwithstanding its proposed dramatic restructuring of traditional PCP licensing policies,

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the petition never explores the implications of creating exclusive frequency rights based upon counting transmitters. This omission is particularly surprising given NABER's control of the data base from which analyses could be performed.

With now less than current information, Mtel found that the petition would have several immediate and long term consequences. In particular, the following basic observations could be made:

- Under NABER's National System proposal, (1) six of the forty 900 MHz channels would immediately be set aside for exclusive use by four PCPs, and (2) all of the remaining thirty-four frequencies could later be converted to National Systems.
- NABER does not reconcile its National System plan with the need to insure spectrum availability for (1) migration of lower band systems to 900 MHz; (2) expansion or growth of existing facilities on frequencies converted to National Systems; or, (3) non-PCP private system uses.
- NABER does not address numerous opportunities for warehousing, speculation and other abuses likely to result from its National System proposal to bestow exclusive frequency rights on PCPs for markets they do not now and may never ultimately serve.
- No orderly process is proposed to allow competing PCPs a fair start to achieve protected status - some would be just starting the race that others would have already finished.

Hopefully, in its reply comments, NABER will provide accurate, updated details about the number of systems immediately acquiring exclusive national spectrum rights, the effects on incumbent licensees not qualifying for exclusive rights and the real world problems of abuses occurring if the

number of transmitters, standing alone, determines a licensee's spectrum rights. Its petition, however, answers none of these critically important questions.

II. NOT SURPRISINGLY, THE ONLY PARTIES SUPPORTING NABER'S PETITION ARE THE PRIMARY BENEFICIARIES OF ITS NATIONAL SYSTEM PROPOSAL

Only two parties filed comments supporting NABER's petition -- Paging Network, Inc. ("PageNet") and PacTel Paging ("PacTel"). Not surprisingly, these proponents of the proposed rule changes are its primary beneficiaries. PageNet would immediately acquire nationwide, exclusive spectrum rights to at least two frequencies (929.2875 MHz and 929.5652 MHz). PacTel would obtain exclusive, nationwide frequency rights to 929.9375 MHz.

While PageNet and PacTel may fully utilize set-asides granted under the National System proposal, their statements in support are less illuminating than NABER about the effects of the rule changes on other existing and future licensees. Instead, PageNet and PacTel are content to largely reiterate the same basic themes embodied in the NABER's petition. Several points emphasized in their comments nonetheless warrant discussion.

A. PageNet Assumes that Exclusive Frequency Rights Are Needed to Avoid Future Congestion Problems and To Encourage Efficient Use of Spectrum

PageNet's comments flow from the central premise that "[w]hile spectrum crowding is not yet a significant problem on the more recently allocated 900 MHz channels, PCP growth trends indicate that similar congestion could be imminent unless the shared licensing rules are substantially modified for this band."¹ PageNet then proceeds to conclude that exclusive spectrum rights are needed to prevent overcrowding; provide incentives for licensees to employ spectrally efficient advanced technologies; and to encourage investments in the band. According to PageNet, the NABER proposal contains effective safeguards to prevent speculative and warehousing abuses.

In essence, PageNet chooses to ignore the principal problem with NABER's petition. Namely, the National System plan would bestow exclusive nationwide spectrum rights based solely on deployment of three hundred transmitters anywhere in the country on a given frequency. As a result, a national system licensee would not have any obligation to load those transmitters or to offer service anywhere else in the country.

Common sense dictates that rules based upon counting transmitters will have results contrary to PageNet's stated

¹Comments of Paging Network, Inc. at 2 (filed June 10, 1992).

goals. Speculation and warehousing are inherently invited. Investment in 900 MHz channels is discouraged by the risk of frequencies being converted to exclusive National System status for the benefit of another carrier operating in another part of the country. Spectrum efficiency is discouraged because throwing up transmitter "sticks" buys unencumbered use of a frequency. In short, NABER's plan encourages the very problems PageNet seeks to avoid.

B. PacTel Assumes That the Petition Would Promote Migration of Lower Band Licensees to 900 MHz

PacTel, for its part, assumes that the NABER petition would " . . . serve the public interest by incenting current PCP operators to migrate from the congested VHF PCP channels to the relatively unused 929 MHz PCP channels."² It notes that "[a] significant number of PCP operators stated that they were reluctant to build systems in the 929 MHz band without some protection from the problems currently experienced by licensees on 152.480 MHz. Therefore, granting exclusivity to licensees of these channels will motivate carriers to invest in systems in this band; thus, decreasing the problems currently experienced on VHF PCP channels."³

PacTel assertions are counter intuitive and wrong. NABER's petition does nothing to expressly favor or

²Comments of PacTel Paging at 2 (filed June 10, 1992) ("PacTel Comments").

³PacTel Comments at 4.

facilitate migration to 929 MHz. In fact, the National System proposal creates constant uncertainty that any contemplated use of the 929 MHz band might be frozen or precluded by the conversion of frequencies into exclusive nationwide assignments. As confirmed by the lower band PCP licensees commenting in this proceeding, the proposal discourages rather than encourages migration.⁴

III. ALL OTHER PCP INDUSTRY COMMENTS OPPOSE NABER'S NATIONAL SYSTEM PROPOSAL

In contrast to PageNet and PacTel, all other PCP industry participants oppose NABER's National System proposal. Dial Page, L.P. ("Dial Page") and Dial-A-Page, Inc. ("DIAL") question the need for exclusive nationwide rights given the fact that NABER's policies already accord de facto exclusivity,⁵ and no showing of consumer demand has been made.⁶ Fone Page, Inc. and Raserco, Inc., as lower band licensees, point out that NABER's proposal does not facilitate, but rather discourages migration to 900 MHz frequencies.⁷

⁴Comments of Fone Page, Inc. at 1-2 (filed June 10, 1992); Comments of Raserco, Inc. at 1-2 (filed June 12, 1992).

⁵Comments of Dial Page, L.P. at 2-3 (filed June 10, 1992) ("Dial Page Comments").

⁶Comments of Dial Page, L.P. at 4 (filed June 10, 1992) ("Dial Page Comments"); Comments of Dial-A-Page, Inc. at 4 (filed June 10, 1992).

⁷See supra note 4.

Most telling from these comments is Dial Page's documentation that warehousing is already a problem in the 900 MHz band. As its comments illustrate, there is reason to believe that many current licensees are simply sitting on their authorizations.⁸ Moreover, a transmitter-based system for awarding exclusivity would freeze out true service provider "by the inevitable wave of speculators which would be let loose to gum up this Commission's processes by the PCP frequency grab NABER's proposal would launch."⁹ In sum, the majority of PCP comments confirm the fears and concerns articulated by Mtel.

IV. CONCLUSION

In view of the record before the Commission, there is no basis for moving forward with NABER's petition for rulemaking. The National System proposal is not only unnecessary, its inimical with the very goals NABER

⁸Comments of Dial Page at 5-7.

⁹Comments of Dial Page at 5.

purportedly seeks to achieve. Accordingly, the petition should be summarily dismissed.

Respectfully submitted,



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Dated: June 25, 1992

CERTIFICATE OF SERVICE

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